THE HIGH COURT OF UTTARANCHAL AT NAINITAL.
A.O. No. 173 of 2001
Old F.A.F.O. No. 137 of 1993

1. State of U.P. through Secretary, P.W.D. Department, U.P.Govt. Lucknow.
2. Executive Engineer, Construction Division, P.W.D., Askot, District Pithoragarh.

… **Appellants.**

Versus

1. Sri Dhan Singh, S/O Dhar Singh,
2. Smt. Dhana Devi W/O Dhan Singh,
   Both residents of village Jumma, Patti Malla Askote, Tashsil Dharchula, District Pithoragarh..

… **Respondents**

Sri Nand Prasad, learned Standing Counsel for the appellants-State.
Sri Manav Sharma, holding brief of Sri B.D.Upadhyaya, learned counsel for the respondents.

Date 19-05-2006.
P.C : Hon. B.S. Verma, J.

This appeal has been preferred under Section 30 of the Workmen's Compensation Act, 1923 ***(for short referred to as the Act)*** against the judgment and award dated 17-09-1992, passed by Labour Compensation Commissioner Pithoragarh (***in short the Commissioner)*** in W.C. Case No. 20 of 1989, Sri Dhan Singh and another Vs. Executive Engineer, P.W.D. Construction Division Askote, Pithoragarh, whereby the learned Commissioner awarded compensation of Rs. 53,128/- along with interest @ 6% per annum, to the claimants as against the Insurance Company-appellant as mentioned in the impugned order. Aggrieved, the State has come up in appeal

Relevant facts of the case are that the claimants-respondents filed a claim petition under the Act before the learned Commissioner on 27.6.1989 with the allegation that their son Gopal Singh, who was a workman under the employment of the appellants lost his life due to an accident during the course of his employment on 11.1.1989 when he was working at Tawaghat-Darma motor road near village Dar. It is alleged that while he was working, glacier rolled down from the hill-side. He was buried under the earth and died due to the injuries sustained by him on that count. After four

days, his body was recovered when the debris was removed and post mortem was conducted on 14.1.1989. The deceased was getting monthly wages @ Rs. 600/- and he was aged about 22 years. The claimants claimed compensation of Rs. 60,000/- for the accidental death of their son from the O.P.-appellants. In support of their claim documents were filed along with the claim petition.

The opposite party-employer filed written statement on 30-7-1990 and contested the proceedings. The learned Commissioner framed necessary issues in the case. After recording the evidence led by the parties, the learned Commissioner came to the conclusion that the workman-deceased lost his life due to an accident in the course of his employment, therefore, the claimants were entitled to get compensation from the employer. Ultimately, after applying the proper formula as per provisions of Section 4 of the Act, the learned Commissioner worked out the compensation as Rs. 53,128/- and ordered the employer to pay compensation along with interest @ 6% from the date of accident till payment vide order dated 17-9-1992.

At the outset, it may be mentioned that the appeal under Section 30 of the Act can only be entertained if any substantial question of law is involved in the appeal.

From the grounds taken in the memo of appeal, the only substantial question of law, which requires to be answered is whether the deceased is covered by the definition of ‘workman’ and died in the course of his employment as a result of accident?

From the side of claimants, Dhan Singh P.W.1, who is father of the deceased, Kunwar Singh, P.W.2, who was Beldar at the relevant time in the Public Works Department, Dharchula and Roop Singh, another Beldar of the P.W.D. P.W.3 were examined. P.W.2 and P.W.3 are the employees of the Department as well as eye witnesses and from their evidence, it is clearly established that the

deceased was working as Beldar in the Public Works Department. Clause (viii) (c) if the Schedule II clearly provides that any person employed in the construction, maintenance, repair or demolition of any road, bridge, tunnel or canal is covered in the definition of 'workmen' as contained in Section 2(1)(n) of the Act. The employer-appellants have entirely failed to lead any evidence to prove that the deceased was not covered by the definition of 'workmen'. A lame stand was taken by the appellant to show that the deceased Gopal Singh was not on duty on the fateful day and the employer has produced D.W.1 P.N. Chaudhary, Assistant Engineer, and D.W.2 Subhash Chandra Joshi, Senior Clerk of the employer department to show that the deceased was a daily wager and he was not on duty after 7.1.1989. There is categorical statement of the father of the deceased that his deceased son Gopal Singh was working in the Public Works Department for the past three years preceding the date of his accidental death. P.W.2 and P.W.3, who were ***Beldar*** at the relevant time have stated on oath that the deceased was working with them. They have categorically stated that on the ill-fated day all of them were working in their respective beats and when Gopal Singh was working on the road, due to fall of glacier from the hill side, he was buried in the earth and his dead body was recovered after 3-4 days. From a close perusal of the entire evidence on record, it is amply clear that the deceased died due to injuries suffered by him in the course of his employment.

The employer has disputed the date of accident, but in the facts and circumstances of the case, it is not material whether deceased died on the date as alleged by the claimant. It is not disputed that the dead body of the deceased was recovered after 3-4 days of the accident and post mortem of the dead body was conducted. The learned Commissioner has elaborately dealt with this point in his judgment and after examining the evidence, it was held by the Commissioner that Gopal Singh died on 9-1-1989 at about 2-30 p.m. in the course of his employment. The record shows that the employer has failed to prove by cogent evidence that

deceased was not on his duty. The witnesses P.W.2 and P.W.3 are the eye-witnesses of the occurrence with whom the deceased was also engaged to clean the road. The witnesses of the appellant-employer could not say whether the entries made in the muster roll were correct or not. The person who used to make entries in the muster roll has not been produced in the witness box.

From a perusal of the documentary as well as oral evidence on record, it is fully proved that the deceased Gopal Singh was a workman under the employment of respondent no.2, who had died on 9.1.1989 in the course of his employment. The substantial question of law is accordingly answered in favour of the respondents and against the appellants. The learned Standing Counsel could not point out any manifest error of law committed by the learned Commissioner.

There is no force in the appeal preferred by the appellants. The learned Commissioner has not committed any illegality or perversity in this case. The impugned judgment and award does not suffer from any manifest error of law. The award dated 17-9-1992 is liable to be affirmed. The appeal lacks merit.

No other substantial questions of law is involved in this appeal.

The appeal is hereby dismissed. The impugned award dated 17-9-1992 is affirmed. No order as to costs.

The compensation amount deposited before the learned Workmen Compensation Commissioner Pithoragarh through Cheque No. 637/229169 dated 7-11-1992 on 9-11-1992 be released in favour of the claimants.

(B.S.Verma, J.)

RCP